

GEORGE A. BREENE

IBLA 73-267

Decided September 13, 1973

Appeal from decision (W 36888) of Wyoming State Office, Bureau of Land Management, requiring execution of stipulations suggested by Forest Service as a condition precedent to issuance of an oil and gas lease.

Reversed and remanded.

Oil and Gas Leases: Generally! ! Oil and Gas Leases: Acquired
Lands Leases! ! Oil and Gas Leases: Applications: Generally! ! Oil
and Gas Leases: Consent of Agency

Although the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970), requires the consent of the agency administering the surface of acquired federal lands and compliance by an oil and gas offeror with any special stipulations required by such an agency as a condition to the issuance of the lease, where an oil and gas lease offer is made for available public lands, which have been withdrawn, the determination to lease or not to lease is properly made by the Department of the Interior. It may adopt and incorporate special stipulations proposed by the agency administering the surface and require the offeror to agree thereto, or it may decline to adopt any such proposed stipulations and issue the lease without them. Proposed special lease stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest.

Oil and Gas Leases: Generally! ! Oil and Gas Leases: Applications:
Generally! ! Oil and Gas Leases: Consent of Agency

Where the Forest Service suggests stipulations which are reasonably designed to protect surface values of public lands withdrawn for national forest purposes, and also suggests a stipulation barring any disturbance of the surface, based only on the fact that the land is in an "inventoried roadless area", the latter stipulation will not be adopted.

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant.

OPINION BY MR. FISHMAN

George A. Breene has appealed from a decision, dated January 9, 1973, of the Wyoming State Office, requiring him to execute certain stipulations suggested by the U.S. Forest Service, as a condition precedent to issuance of an oil and gas lease under W 36888.

Appellant was the successful drawee 1/ for parcel no. 387, for some 2000 acres of public lands within the Teton National Forest, the surface management of which is under the jurisdiction of the Department of Agriculture.

The stipulations suggested by the U.S. Forest Service which the State Office adopted in its decision of January 9, 1973, are as follows:

I.

There will be no occupancy or any kind of surface disturbance on any land in the lease.

1/ The "Notice of Lands Available for Oil and Gas Leasing" was posted August 21, 1972.

II. [2/]

1. Notwithstanding any provision of this lease to the contrary, any drilling, construction or other operation on the leased lands that will disturb the surface thereof or otherwise affect the environment (hereinafter called "surface disturbing operation") conducted by lessee shall be subject, as set forth in this stipulation, to the prior approval of such operation by the Area Oil and Gas Supervisor [of the Geological Survey] in consultation with the appropriate surface management agency and to such reasonable conditions, not inconsistent with the purposes for which this lease is issued, as the Supervisor may require to protect the surface of the leased lands and the environment.

2. Prior to entry upon the land or the disturbance of the surface thereof for drilling or other purposes, the lessee shall submit for approval two copies of a map and explanation of the nature of the anticipated activity and surface disturbance to the Area Oil and Gas Supervisor, Geological Survey, Casper, Wyoming, and will also furnish the FOREST SUPERVISOR with a copy of such map and explanation.

An environmental analysis will be made by the Geological Survey in consultation with the appropriate surface management agency for the purpose of insuring proper protection of the surface, the natural resources, the environment, existing improvements, and for assuring timely reclamation of disturbed lands.

3. Upon completion of said environmental analysis, the Area Oil and Gas Supervisor shall notify lessee of the conditions, if any, to which the proposed surface disturbing operations will be subject.

2/ The language of stipulation numbered II has been embodied in Bureau of Land Management form 3109-5, and all oil and gas offerors are required to sign this stipulation as a condition precedent to the issuance of the lease. See Allan R. Hallock, 13 IBLA 13 (1973).

Said conditions may relate to any of the following:

- (a) The location of drilling or other exploratory or developmental operations or the manner in which they are to be conducted;
- (b) The types of vehicles that may be used and the areas in which they may be used; and
- (c) The manner or location in which improvements such as roads, buildings, pipelines or other improvements are to be constructed.

Appellant objects to the stipulations set forth above on the basis that the "Notice of Lands Available for Oil and Gas Leasing" did not advert to them. He further objects to stipulation Number I as "so wholly unreasonable and so strigent [sic] as to be nugatory of the lease that it is contrary to the public interest and the stipulation number II above will adequately protect any special interest of the United States Forest Service in the lands."

Appellant's complaint is directed to stipulation numbered I, as he has expressed his willingness to accept the stipulation numbered II.

In Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972), the Board held that where an oil and gas offer is made for available public lands (in contradistinction to acquired lands under 30 U.S.C. §§ 351-359 [1970]), 3/ which have been withdrawn for another department or agency, the determination whether to lease is properly made by this Department. In those circumstances, this Department may adopt and incorporate special stipulations proposed by the agency administering the surface and require the offeror to agree thereto. However, this

3/ Under 30 U.S.C. § 352 (1970), an oil and gas lease, embracing acquired lands may not be issued, "except with the consent of the head of the executive department * * * having jurisdiction over the lands * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered * * *."

Department may decline to adopt any or all of such proposed stipulations and issue the lease without them. Proposed special lease stipulations must be supported by valid reasons which will be weighed by this Department with due regard for the public interest.

The record contains a letter to the State Office from the Forest Service office at Ogden, Utah, dated December 21, 1972, reciting in part:

Leases W-36890 and W-36888 [the case at bar] fall within an inventoried unroaded area. We recommend that the leases be issued providing [sic] that there is no occupancy of the surface of the lease areas.

That the lands in issue are "within an inventoried unroaded area" does not afford a sufficient basis for a virtually complete negation of the rights granted by an oil and gas lease. Absent directional drilling, there could be no production of the oil and gas in the lands. There is no showing that by reason of adjoining leases directional drilling is feasible. Nor has the Forest Service proffered any sound reason for the need to keep the surface in its pristine state. We note in passing that stipulation Number I, as tendered to appellant, goes far beyond the recommendation of the Forest Service of December 21, 1972.

In any event, stipulation Number II affords a reasonable degree of protection to the national forest resources on the lands. We therefore deem stipulation Number I unwarranted. Cf. Duncan Miller, 11 IBLA 107 (1973).

Accordingly, the requirement for execution of stipulation Number I is deleted from the State Office decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is reversed to the extent that it required appellant to execute stipulation Number I and the case is remanded to that office for appropriate action.

Frederick Fishman
Member

We concur:

Edward W. Stuebing
Member

Douglas E. Henriques
Member

